

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

vs.

BEN B. BOOTHE  
TX-1320101-G§  
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§DOCKETED COMPLAINT NO.  
07-004 & 07-171**AGREED FINAL ORDER**

On this the 29<sup>th</sup> day of FEBRUARY, 2008, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of Ben B. Boothe, (Respondent). The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

**FINDINGS OF FACT**

1. Respondent Ben B. Boothe is a Texas state certified general real estate appraiser, holds certification number TX-1320101-G, and has been certified by the Board during all times material to the above-noted complaint cases.
2. Respondent is subject to the jurisdiction of the Board, the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq. (the Act), the Rules of the Board, 22 TEX. ADMIN. CODE §§153, 155, 157 (the Rules), and the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.
3. On or about July 24<sup>th</sup>, 2006, and June 8<sup>th</sup>, 2006, respectively, Respondent appraised real property located at 7621 Russell Curry Rd., Arlington, Texas ("the Russell property") and 285 acres around NWC Palominas Rd. & Hwy. 92 ("the proposed subdivision property").
4. On or about September 6<sup>th</sup>, 2006, Kelly Brechel filed a complaint with the Board in connection with the Russell property appraisal report. The complaint claimed that the Respondent violated various provisions of USPAP during the course of his appraisal of the Russell property. On or about July 19<sup>th</sup>, 2007 Michael J. Naifeh complained to the Board in connection with the proposed subdivision appraisal. Mr. Naifeh's complaint claimed that the Respondent violated various provisions of USPAP during the course of his appraisal of the proposed subdivision property.
5. The Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103, notified Respondent of the nature of the accusations involved in both complaints and Respondent was afforded an opportunity to respond to the accusations in the complaints. Respondent's responses to the complaints were received.

6. Respondent violated TEX. OCC. CODE § 1103.0405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal reports for the two properties:

- a) Respondent communicated misleading appraisal reports for the Russell and proposed subdivision properties;
- b) Respondent violated the Competency provisions with respect to the proposed subdivision property because he failed to become competent with the market area which the appraisal assignment was based upon;
- c) Respondent failed to describe adequately his scope of work for the proposed subdivision property appraisal nor does it appear adequately addressed to complete the assignment;
- d) Respondent failed to comply with supplemental standards for the Russell property appraisal which relate to reaching an "as is" value as required by FIRREA when conducting bank related appraisals;
- e) Respondent failed to properly identify the purpose of the appraisal assignment for the Russell property, failed to provide the source of his definition of value in the Russell property report and failed to provide an appropriate and consistent definition of value in the proposed subdivision property appraisal;
- f) Respondent failed to clearly and accurately disclose hypothetical conditions in the Russell and proposed subdivision property appraisals;
- g) Respondent failed to adequately identify and report the site and improvement(s) description for both appraisal assignments and failed to address any easements or restrictions;
- h) Respondent in his proposed subdivision property appraisal did not adequately analyze land use regulations, supply and demand and general market trends;
- i) Respondent failed to maintain records evidencing collection, verification and analysis of sales and cost data for use in his appraisal reports;
- j) Respondent did not provide sufficient discussion and analysis of his highest and best use determinations for both properties being appraised;
- k) Respondent used inappropriate methods or techniques in his cost approach analysis, including his site value determination, and cost new of improvements analysis;
- l) Respondent failed to collect, analyze and reconcile sales comparison data properly, did not select appropriate comparable sales, did not make appropriate

adjustments, and generally used improper methods and techniques in his sales comparison approach analysis for the Russell property appraisal report;

- m) Respondent used inappropriate methods and techniques in his income approach analysis for both appraisal reports, including failing to provide rental data, inadequate analysis of concluded retail value of proposed lots, not supporting estimated expenses, failing to base future rent or income potential and expenses on reasonable clear and appropriate evidence and using an inappropriate method to determine the capitalization rate which was not supported by market data;
- n) Respondent failed to report the land sale of the proposed subdivision property that occurred in 2005;
- o) All of Respondent's reports contained substantial errors of omission or commission that significantly impacted both appraisal reports' reliability; and
- p) All of Respondent's reports contained a series of errors that collectively caused the appraisal reports to be unreliable

7. Respondent omitted material facts as noted above for the appraisal reports on both the Russell and proposed subdivision properties.

#### CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq.
2. Respondent violated numerous provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.0405, 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3).
3. Respondent violated 22 TEX. ADMIN. CODE §153 20(a)(9) by omitting material facts in his appraisal reports.

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that the Respondent:

- a. Shall have his certification suspended for 24 months with that suspension being fully probated under the conditions detailed in this order. This probated suspension is conditioned on Respondent's timely satisfaction of all the educational, monetary and examination requirements outlined in this order;
- b. Shall sit for and receive a passing grade on the same examination taken by those applying for their general real estate appraisal certification;

1. Respondent shall submit examination results reflecting he has passed the examination no later than July 1<sup>st</sup>, 2008; and,
  2. Proof of successful passage of the examination within this timeframe is a condition of the probated suspension of his certification. If established at a hearing, Respondent's failure to pass the examination in a timely manner shall result in the imposition of the suspension until such time as Respondent establishes that he has passed the examination
- c. Attend and complete a minimum, 15 classroom-hour course in USPAP;
  - d. Attend and complete a minimum, 7 classroom-hour course in Discounted Cash Flow;
    - i. No exam shall be required for the Discounted Cash Flow course;
  - e. Attend and complete a minimum, 30 classroom-hour course in the Income Approach;
  - f. Attend and complete a minimum, 7 classroom-hour course in Appraising Subdivisions;
    - i. No exam shall be required for the course in Appraising Subdivisions;
  - g. Attend and complete a minimum, 30 classroom-hour course in the Sales Comparison Approach;
  - h. Pay to the Board an administrative penalty of \$5,000.00; and,
  - i. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future, or be subjected to further disciplinary action.

**ALL CLASSES** required by this Agreed Final Order must be classes approved by the Board and must be completed within **TWENTY-FOUR MONTHS** of the date of this Order and documentation of attendance and successful completion of the educational requirements of this Order shall be delivered to the Board on or before the end of the twelve-month period indicated. None of the classes or seminars required by this Order may be taken through correspondence courses. Unless otherwise noted above, all classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing education requirements for certification.

Failure to comply with any of the terms of this Final Agreed Order shall result in initiation of a contested case proceeding against Respondent and after opportunity for a hearing, possible imposition of disciplinary sanctions against Respondent.

Respondent, by signing this Agreed Final Order, neither admits nor denies that the findings of fact and conclusions of law herein set forth are correct; however, Respondent consents to the entry of this Agreed Order to avoid the expense of litigation and to reach an expeditious resolution of this matter. Respondent also agrees to satisfactorily comply with the mandates of this Agreed Final Order in a timely manner.

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published in the Board's newsletter and/or on the Board's web site.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Consent Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 28 day of February, 2008.

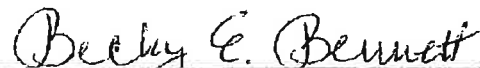


JOHN ALLEN CHALK, ATTORNEY  
FOR BEN B. BOOTHE



BEN B. BOOTHE

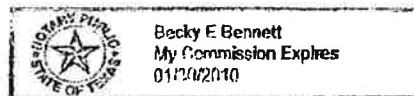
SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 28 day of February, 2008, by BEN B. BOOTHE, to certify which, witness my hand and official seal.




Notary Public Signature




Notary Public's Printed Name



Signed by the Commissioner this 29th day of FEBRUARY, 2008.

  
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Timothy K. Irvine, Commissioner  
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 29 day of FEBRUARY, 2008.

  
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Larry Kekel, Chairperson  
Texas Appraiser Licensing and Certification Board

*Dwight P. Bayers*